KENNY HEIGHTS DEVELOPMENT SDN BHD A

v.

PENTADBIR TANAH WILAYAH PERSEKUTUAN KUALA LUMPUR & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
ZURA YAHYA JC
[CIVIL SUIT NO: S3-15-03-2001]
3 NOVEMBER 2009

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LAND LAW: *Acquisition of land - Compensation - Assessment of market value - "Agriculture" land slotted for development - Lay-out plan and conversion to "building" land approved, but category of land use in document of title remained "agriculture" - Whether to be treated as agricultural land - Whether assessment made by Land Administrator sustainable - Comparables - Whether proper comparables used*

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On 17 February 2000, several parcels of the applicant's land in Kuala Lumpur ('the scheduled lands') were acquired by the Government for the purpose of a project to be undertaken by the second respondent, and following that, compensation at the rate of RM80 per sq feet as recommended by the Government valuer had been awarded by the first respondent Land Administrator to the applicant. Dissatisfied with the award, the applicant filed the present land reference suit, arguing principally that: (i) the award of RM80 per sq feet did not represent the market value of the scheduled lands, and that rightly and properly, the same ought to be assessed at RM180 per sq feet; (ii) since the applicant's layout plan to develop the scheduled lands and its application to convert the category of land use thereof from "agriculture" to "building" had been approved by the relevant authority, it was therefore wrong of the Land Administrator to have treated the scheduled lands still as agricultural lands and assessed them as such; and (iii) bearing in mind the award of RM60 per sq feet made by the High Court in *Kenny Heights Development Sdn Bhd v. Pentadbir Tanah Daerah Wilayah Persekutuan* in respect of the acquisition of the applicant's lands in 1990 (same vicinity), it made no sense for the Land Administrator to have increased the rate for a mere RM20 per sq feet ten years later in 2000. These arguments apart, the issue of whether the comparables as relied upon by the applicant in coming the rate of RM180 per sq feet aforesaid were indeed comparable to the scheduled lands, also came up for determination before the learned Judicial Commissioner.

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Held (dismissing application):

(1) Although approval of the lay-out plan has been given by Dewan Bandaraya Kuala Lumpur and conversion approval from category of land use "agriculture" to "building" has been obtained from the Director of Land and Mines, these are conditional approvals. The applicant also has yet to pay the premium for the conversion and obtain the final approval in respect of their application for the development of the land. Hence, the category of land use for the purpose of valuation in respect of the scheduled lands has to be "agriculture" as stated in the documents, or at the most agricultural lands with potentials for development. (paras 8-10)

(2) The applicant's valuer, in estimating the market value of the scheduled lands, had incorrectly acted on the assumption that conversion had been effected, whereas the lands were at all material times still agricultural lands. This aside, the applicant's valuer had also not taken into account other relevant considerations or variables in arriving at the market value. Consequently, his estimation of RM180 per square feet cannot be accepted. (paras 11-15)

(3) The comparables of the applicant's valuer have the category of land use as "building" whereas the scheduled lands are agriculture lands. The comparables also are not located within the vicinity of the scheduled lands, while some were mere advertisements and newspaper reports and not registered sales. Further, transactions such as sales of bungalow lots or sales of land having smaller sizes which the valuer used as comparables are not suitable comparables, since smaller plots of land generally command a higher price than larger ones. The comparables as relied upon by the applicant's valuer were therefore inappropriate. (paras 18-19)

(4) The comparables relied by the respondents' valuers are located within the locality of the scheduled lands. They have closer and similar characteristics with the scheduled lands and they are transacted closest to the material date of valuation. Hence they are good comparables. The first respondent's valuer has also taken into consideration the potential developments value of the scheduled lands. The estimation by the first respondent's valuer is therefore reflective of the market value of the land. (para 21)

(5) In the span of ten years from the time the award in *Kenny Heights Development Sdn Bhd v. Pentadbir Tanah Daerah Wilayah Persekutuan* was made to the time the scheduled lands were acquired in 2000, the country, due to the 1997 Asian economic crisis, had undergone an economic downturn and the property market was badly hit. With the country's economy returning in the year 2000, an increase in the value of property could not be high in the first quarter of the year. Hence, an increase in value of RM20 per sq feet as estimated by the respondents is fair and reasonable. (para 24)

(6) The market value of the scheduled lands at RM80 per sq feet awarded by the first respondent is fair and reasonable and served as adequate compensation to the applicant. (para 25)

Case(s) referred to:

Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang [1967] 1 LNS 12 HC ***(refd)***

Datuk Dr Murugasu Sockalingam & Anor v. Superintendent of Lands and Surveys First Division, Sarawak [1983] 1 LNS 30 FC ***(refd)***

Kenny Heights Development Sdn Bhd v. Pentadbir Tanah Daerah Wilayah Persekutuan (KL High Court Reference No: S1-15-01 of 1994) (Unreported) ***(refd)***

Pentadbir Tanah Daerah Kota Tinggi v. Siti Zakiyah Sh Abu Bakar & Ors [2005] 4 CLJ 630 FC ***(refd)***

Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 4 CLJ 57 CA ***(refd)***

Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co Ltd [1966] 1 LNS 188 FC ***(refd)***

Nanyang Manufacturing Co v. The Collector of Land Revenue, Johore [1953] 1 LNS 59 HC ***(refd)***

Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC ***(refd)***

Legislation referred to:

Federal Territory of Kuala Lumpur Land Rules 1995, s. 14(3)

For the plaintiff - Joy Appukuttan; M/s SK Yeoh & Partners

For the 1st respondent - Alice Loke SFC (Nor Hanim with her); AG's Chambers

For the 2nd respondent - Peramjit Singh; M/s Simon Hue & Assocs

Reported by Wan Sharif Wan Ahmad

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JUDGMENT

Zura Yahya JC:

[1] This land reference is in respect of lands held under title particulars Grant 5357 Lot no. 21759, Grant 5358 Lot no. 21760, Grant 5359 Lot no. 21761, Grant 5360 Lot no. 21762 and Grant 5361 Lot no. 21763, Mukim Batu Daerah Wilayah Persekutuan Negeri Wilayah Persekutuan (hereinafter referred to as the scheduled lands). They were acquired for Projek Lebuhraya Skim Penyuraian Trafik Kuala Lumpur – Barat (Pakej A: Peringkat 2). The date of acquisition was 17 February 2000 *vide* gazette notification 1635.

[2] The 1st respondent in his award of 19 June 2000 decided on a market value of RM80 per sq feet for the scheduled lands. An award for injurious affection and severance at 10% and 14% respectively was also determined for the applicant based on the market value of RM80 per sq feet. Thus the compensation sum awarded to the applicant was RM21,553,003.84. The applicant was dissatisfied with the compensation sum, hence filed Borang N dated 10 July 2000 for Reference to the High Court. Through the notice of objection filed in Borang N, the applicant claimed the compensation as determined by the Land Administrator (1st respondent) at RM80 per sq feet was below the market value of the scheduled land and should have been assessed at a market value of RM180 per sq feet.

[3] The 2nd respondent was allowed to intervene in this Reference by a majority decision of the Court of Appeal (see *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57).

[4] As agreed by the parties the sole issue to be determined by this court is the market value of the scheduled lands.

[5] The principles relating to the determination of the market value of any scheduled land can be seen in the 1st Schedule of the Land Acquisition Act 1960. The Federal Court in *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 further explains the main principles in determining the market value as follows:

> First, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future eg, the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence.

[6] As regards to potentiality, the Federal Court in *Pentadbir Tanah Daerah Kota Tinggi v. Siti Zakiyah Sh Abu Bakar & Ors* [2005] 4 CLJ 630 has stated:

> … This certainly is in conformity with the settled principle that potentiality is a factor to be taken into account in assessing the market value of the scheduled land. However, potential value and market value are not two separate items which must be determined separately and added to one another. Market value should include potential value …

[7] When determining the market value this court has taken into consideration the valuation reports filed by the parties and the testimony of the valuers who were called as witnesses. It can be seen that valuation of the scheduled lands by the 1st respondent and 2nd respondent do not differ much at RM80 per sq feet and RM83 per sq feet respectively. Whereas that of the applicant is RM180 per sq feet. This wide divergence in the valuation of the applicant and the respondents is due to the category of land use

considered in the valuation. The applicant's valuer has valued the land as building land subject to payment of premium whereas the 1st respondent has valued it as agriculture land with development potential. As for the 2nd respondent's valuer he valued the lands as development land and not agriculture land because of the existence of the lay-out plan which has been approved subject to some conditions. He also stated he would not value the land as building land as the category of land use on the titles was agriculture.

[8] The category of land use for the purposes of valuation in respect of the scheduled lands has to be agriculture as so stated in their documents of title. Although approval of the lay-out plan has been given by Dewan Bandaraya Kuala Lumpur and conversion approval from category of land use 'agriculture' to "building" has been obtained as notified by the Director of Land and Mines, they are conditional approval. The approval of the lay-out plan which was given *vide* letter of 3 September 1997 was subject to various conditions stated therein. The government valuer (SR1) has stated that the approval given to the applicant's lay-out plan was merely an approval in principle to allow for the development of the land and before any development could commence a development order would have to be submitted subsequent to the approval for the lay-out plan. Also the several conditions as stipulated in the letter of 3 September 1997 had to be satisfied. That being so, the applicant has yet to obtain the final approval in respect of their application for the development of the land.

[9] As for the conversion approval, since the premium for conversion has not been paid, the conversion has not taken effect on the date of gazette. The scheduled lands are thus still subject to the category "agriculture".

[10] Since the approvals are conditional, for the purpose of estimating the market value of the scheduled land the category of land use has to be agriculture lands with potential for development. This has been done as in the case of *Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang* [1967] 1 LNS 12 where Raja Azlan Shah J (as he then was) states:

> ... The property must be valued not only with reference to its condition at the time of acquisition but also its potential development value.
>
> In the light of these observations, I take the view that the proper method to arrive at a fair market value of the land acquired, taking all relevant considerations, is to assess its existing value with its inseparably essential element, ie, its potential development value.

[11] In the light of the evidence before the court, the applicant's valuer had valued the lands as building lands less payment of premium. He had acted incorrectly in estimating the market value of the scheduled lands on the assumption that conversion had been effected whereas the lands at all material times were still agricultural lands. Since his estimation of the market value was based on the wrong premise his estimation of RM180 per sq feet cannot be accepted.

[12] The above-mentioned matter has been dealt by the Federal Court in the case of *Datuk Dr Murugasu Sockalingam & Anor v. Superintendent of Lands and Surveys First Divison, Sarawak* [1983] 1 LNS 30. In the said case the Federal Court has agreed with the view of the learned judge at p. 142 of the Appeal Record Part 1, which is as follows:

> ... the Objectors' valuer fell into error in assessing the subject land as though the title condition had already been converted to industrial, commercial and/or residential purposes, when in actual fact, it was limited to agricultural purposes at the material date. ...

[13] Even, going by the basis for valuation as building lands less payment of premium the estimation of the estimated market value cannot be at RM180 per sq feet. This is because there are other considerations or variables need to be taken into account besides the premium when making the adjustment to arrive at the market value. This has not been done by the applicant's valuer when he arrived at the market value of RM180 per sq feet.

[14] On the method of valuation all the three valuers have adopted the comparative sales method as statutorily provided for in the 1st Schedule to the Land Acquisition Act 1960. The statutory guidelines in determining market value provide *inter alia*, prices paid for recent sales of land with similar characteristic.

[15] Though all the three valuers adopted the same method of valuation, the estimated market value of the applicant's valuer differs widely from that of the respondents' valuers. This comes about due to the comparables used by them. Comparables used by the applicant were unregistered sales (ie, sales which were not registered with the land office), sales of bungalow plots (residential) whilst the scheduled lands are agriculture lands, sales which were located in a higher-end/superior residential location compared to the location of the scheduled lands, sales of lands having smaller lot sizes of between 6,000 sq feet to 30,000 sq feet which were not comparable to scheduled lands which were having land sizes of about more than 3 to 7 acres per lot, sales of lands with infrastructures, sales between companies (Securities Commission), and sales advertisement in the newspaper. Also some of the comparables are not located within the vicinity of the scheduled lands.

[16] Comparables used by the 1st respondent's valuer are those in the same vicinity as the scheduled lands. Comparables such as Lot 15235, Lot 15221, Lot 1889 and Lot 1899 as stated at pp. 88 and 89 by the 1st respondent report marked as bundle A were sales transacted at prices between RM50 per sq feet during the period from 1996-1998. In the additional report which has been marked as bundle C, 1st respondent valuer had at pp. 36-39 referred to comparables which were transacted at between RM29.80 per sq feet - RM55 from 1996-1999.

[17] As for the 2nd respondent's valuer he had referred to three comparables which were also referred to by the 1st respondent's valuer.

In *Nanyang Manufacturing Co. v. The Collector of Land Revenue, Johore* [1953] 1 LNS 59, Buhagiar J said:

> I consider that the safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood after making due allowance for all the circumstances.

[18] After considering the comparables put forward by the valuers, the court is of the view that the comparables relied upon by the applicant's valuer were inappropriate and dissimilar comparables. As mentioned earlier the comparables of the

applicant's valuer have the category of land use as "building" whereas the scheduled lands are agriculture lands, the comparables are not located within the vicinity of the scheduled lands, since they are mainly located in the vicinity of Jalan Semantan, Damansara Heights and Taman Duta which are exclusive mixed residential and commercial areas whereas the scheduled lands are located in the Mont Kiara/Sri Hartamas locality, some of the comparables do not possess similar characteristics to the scheduled lands since they are bungalow lots, and some of the comparables are not registered sales but advertisements and newspaper reports.

[19] Transactions such as sales of bungalow lots or sales of land having smaller lot sizes which the applicant's valuer had used as comparables are not suitable comparables to the scheduled lands. This is so since small plots of land generally command a higher price than a large plot of land. This has been pointed out in *Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd* [1966] 1 LNS 188 where the Federal Court has stated:

> ... Common experience has shown that in areas where there is a small population the price per unit of area for a large parcel is less than the price per unit of area for a small parcel.

[20] As for the Securities Commission valuation which the applicant's valuer had referred to in his report marked as bundle D the court is of the view that this comparable has to be disregarded. It has to be so since the valuation was done in relation to the restructuring of two companies and hence unable to say whether the market value arrived at followed the principle of willing buyer and willing seller. Further, the different dates ie, the date of valuation as being 1 August 2000 and the date Securities Commission approved the valuation through their letter dated 4 October 2001 are all dates after the date of the acquisition of the scheduled lands.

[21] As mentioned earlier the comparables, relied by the 1st respondent's valuer and the 2nd respondent's valuer are located within the locality of the scheduled lands. They have closer and similar characteristics with the scheduled lands and they are transacted closest to the material date of valuation. Hence they are good comparables. Further, the 1st respondent valuer has taken into consideration the potential developments value of the scheduled lands. Having taken all these factors into consideration

A the estimation of the market value of the scheduled lands by the 1st respondent's valuer is therefore reflective of the market value of the land.

[22] During the hearing the 1st respondent's valuer was
B questioned regarding the valuation made for the purpose of conversion of the land use from 'agriculture' to "building". According to the witness the value of the scheduled lands at that time ie, 21 April 1997 was determined at RM68 per sq feet. This amount is based on the market value since according to s. 14(3)
C of the Federal Territory of Kuala Lumpur Land Rules 1995 it provides that the premium to be imposed for change of category of land use has to be calculated on the market value. The applicant had made an appeal in respect of this valuation on the ground that the property prices were on the decline due to
D economic recession. Notwithstanding the appeal, the valuation at the said rate remained. Going by this evidence, it is indeed surprising that for acquisition purposes the applicant is claiming that the market value of the scheduled lands is far more than RM68 per sq feet.

E **[23]** The applicant had also relied on Property Market Report 2000 by Jabatan Penilaian dan Perkhidmatan Harta Malaysia to justify the 20% increase in value of land between the years 1996 to 2000. The said report says "Development land transactions
F arose significantly by 69.2 and 82.7% respectively in number and value over 1999". On this matter, I like to refer to the submission by the learned counsel for the 2nd respondent where he stated that the applicant's valuer and the 1st respondent's valuer had not done a study on the property market whereas the 2nd
G respondent's valuer had testified that the Asian financial crisis which started in September 1997 brought down property market to an all time low between 1998 and 1999 and only in the year 2000 it began to pick. Although the said report gave an impression of an extremely healthy figure of the property market,
H learned counsel submitted that the statement was general and the report did not reflect the property market on a month to month basis in the year 2000. I agree with this submission. Since the acquisition of the scheduled lands was in February 2000, it could not be, that the market value had increased by 20% at the
I beginning of the year when the property market was in doldrums for about two years preceding it.

[24] Learned counsel for the applicant had referred to the case of *Kenny Heights Development Sdn Bhd v. Pentadbir Tanah Daerah Wilayah Persekutuan* (KL High Court Reference No. S1-15-01 of 1994) where the High Court had awarded RM60 per sq feet and this decision had been affirmed by Court of Appeal. Henceforth counsel submitted that in 1990, the award was RM60 per sq feet surely the market value of the same land 10 years later in 2000 could not be just a meagre increase of RM20 per sq feet as alleged by the respective valuer of the respondents. I am not persuaded by this submission. In the span of ten years from the time the award of the said case was made to the time the scheduled lands were acquired, the country due to 1997 Asian economic crisis had undergone an economic downturn and the property market was badly hit. With the country's economy returning in the year 2000 an increase in the value of property could not be high in the first quarter of the year. Hence an increase in value of RM20 per sq feet as estimated by the respondents is reasonable and fair since the scheduled lands were acquired in February 2000.

[25] Premised on the foresaid, the market value of the scheduled lands at RM80 per sq feet awarded by the Land Administrator Federal Territory Kuala Lumpur is fair and reasonable, and served as adequate compensation. Accordingly the applicant's application is dismissed with costs.